

***National Labor Relations Board***  
**OFFICE OF THE GENERAL COUNSEL**  
**Advice Memorandum**

**DATE:** January 15, 1998

**TO:** James J. McDermott, Regional Director, Region 31

**FROM:** Barry J. Kearney, Associate General Counsel, Division of Advice

**SUBJECT:** Global Industrial Contractors, Case 31-CA-22895

This case was submitted for advice as to whether the alleged behavior of some Section 8(a)(3) "salts" during the application process privileged the Employer not to consider any of them for employment.

**FACTS**

Global Industrial Contractors (GIC or the Employer) started up operations as a heating, ventilation and air conditioning company in October 1996. GIC periodically ran advertisements in the paper for employees. In early March 1997 GIC placed an ad in the Bakersfield Californian for journeyman and apprentice electricians. James Whitener is one of the owners of GIC. In March 1997 GIC had its office in a trailer at the Frito Lay facility where it was doing work.

On March 7, 1997, IBEW 428 organizer Duane Moore took Union members and journeymen wirepersons King, Lienemann, Read, Herman, Gaines and Druddridge to the GIC trailer to apply for the advertised position(s). <sup>(1)</sup> Some of the applicants wore IBEW paraphernalia like hats and T-shirts. All of the applicants were then unemployed. All of the applicants submitted completed applications. None of them were tested or interviewed and none were called back or hired by GIC. The Employer and the Union have different versions of what occurred when the applicants were in the GIC trailer.

According to Union organizer Moore, he had gathered the applicants at the Union hall and they all rode together to GIC. Moore led the applicants as a group into the trailer. He announced who he was to Bonnie, the receptionist, and gave her his business card. He told Bonnie the employees with him were journeyman electricians and wanted to apply for employment. Moore said he asked Bonnie about the work GIC had available. Bonnie told Moore there were some upcoming jobs. Moore asked her who the project manger was and if he could have one of his cards. Bonnie said the manager was James Whitener and she would get Moore one of his cards. Bonnie said there was not enough room in the trailer so she asked the applicants to fill out their applications outside the trailer. She then handed out the applications. According to Moore the applicants were not rude and offensive when asked to step outside. He said he did most of the talking. He stated that the applicants were "not interested in being disruptive but were there to fill out applications and expected to be treated fairly." Contrary to the Employer's contentions, Moore said neither he nor the applicants said "bullshit", no one was told that only one job was available and he did not see Whitener on March 7. He said there was someone else in the trailer he did not see. None of the applicant affidavits mention seeing Whitener either.

However, [FOIA Exemptions 6 and 7(c) and (d)] Reed acknowledges one applicant muttered something under his breath when told to go outside to fill out the application, and that he, himself, might have said something about it not being any easier to fill out an application outside against a dirty car window that it was to fill it out in a crowded office. He added, however, that any comments made were not directed at the receptionist or meant maliciously.

Applicants King and Lienemann were the first to turn in their applications. They asked Bonnie if they could be interviewed and she said the person doing the interviewing was not there. After all the applications were in, Moore asked for the project manager's card. Bonnie would not give Moore the card because she said the project manager did not want everyone calling him. Bonnie gave Moore her number to call. None if the applicants was contacted.

According to the Employer, there was three GIC personnel in the trailer on March 7 when the IBEW applicants applied, Bonnie, Whitener and an unnamed person. When the applicants came in, Whitener told them that there was only one job

available. In response several of the IBEW members, who could not be identified by name or physical description, and Moore, expressed disbelief, responded "bullshit" and said that an ad would not be run for only one position.

When the receptionist then asked the applicants to fill out their applicants outside because there was no room in the trailer, the applicants were upset that they had to go outside. The Employer described the applicants' overall behavior as rude and offensive. According to the Employer, the applicant's made the receptionist uncomfortable. The Employer could not identify which applicants said what as it did not know their names or faces.

According to the Employer, the applicants, by their disrespectful attitude, removed themselves from consideration for employment. It was their behavior and not their Union status that kept them from being considered. The Employer felt the IBEW applicants failed to exhibit basic common courtesy and as it had numerous qualified, respectful applicants, it did not need to consider the IBEW applicants. In addition, the applicants were told to contact Bonnie and did not follow through. The Employer argues that it had no obligation to contact, test or interview disrespectful, unmotivated applicants. The Employer says Moore gave Whitener his card on March 7; Moore says he gave the card to Bonnie and never saw Whitener on March 7.

### ACTION

We conclude that the charges should be dismissed, absent withdrawal.

While it is clear that the applicants were engaged in concerted, protected activity when they applied for work as Union "salts", (2) there is no evidence that the Employer refused to hire any of them for unlawful reasons. In this regard, we note that there is no independent evidence of animus. The Employer asserts that in its brief existence, it has knowingly hired at least 2 union members. One of these employees told the Employer that he was "a card carrying union member"; the other, hired as Project Manager, listed on his employment application that he attended Local 11's five-year apprenticeship program and had worked for a union contractor. Further, although the parties disagree as to what actually happened when the applicants went to the Employer's trailer and filled out applications, one Union affiant acknowledges that one applicant muttered something under his breath when told to go outside to fill out the application, and that he, himself, might have said something about it not being any easier to fill out an application outside against a dirty car window that it was to fill it out in a crowded office. He added, however, that any comments made were not directed at the receptionist or meant maliciously. Although individuals may react differently to what was said by, or to the body language of, the Union applicants, in circumstances where there is no independent evidence of animus, the Employer could very well have viewed the Union's behavior as inappropriate when applying for a job. Finally, the individuals hired had equal or greater training and experience than the Union applicants. Thus, this is not a case where the Employer deliberately hired individuals with less experience than the Union applicants in order to avoid the Union.

For all of the above reasons, the charge should be dismissed, absent withdrawal.

B.J.K.

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<sup>1</sup> King had 7 years with the Union, 5 as an apprentice and 2 as a journeyman. King wore an IBEW cap and says he put Union organizer on his application. He does not recall being told that GIC would contact him. He never called GIC back on the job.

Lienemann has 5 years as an apprentice and 3 years as a journeyperson. She wore an IBEW hat and shirt when she applied. She remembers being told the person who interviews was not there and that the company would get in touch with her. She did not contact GIC about the job.

Reed has 15 years experience, 4 in the apprentice program, 11 as a journeyman. He said he put on his application that he would seek to organize on nonwork time. He made no followup call to GIC about his application.

Herman has 12 years experience, 8 years as a journeyman, 4 as an apprentice. He said the GIC receptionist told him that GIC would contact them. He did not call GIC.

[FOIA Exemptions 6 and 7(c) and (d)]. According to his application, Druddridge has 19 years experience, 15 as a journeyman, the others in the apprenticeship program. Gaines has at least 9 years as a journeyman electrician.

<sup>2</sup> **Braun Electric**, 324 NLRB No.2, slip op. at 3 (1997).